NOTES OF CASES.

Constitutional Law—Police Power of State—Prohibiting Employment Agencies.—In Adams *v.* Tanner, decided in the Supreme Court of the United States (June, 1917, 37 Sup. Ct. R. 662), it was held that the right of the individual under U. S. Const., 14th Amend., to engage in a useful and lawful business is unwarrantably infringed by the provisions of the Washington Employment Agency Law (Wash. Laws 1915, chap. 1), enacted in the purported exercise of the police power, which make it criminal to demand or receive, either directly or indirectly, from any person seeking employment, or from any person on his or her behalf, any remuneration or fee for furnishing such person with employment or with information leading thereto. The majority of the court said in part:

"The bill alleges 'that the employment business consists in securing places for persons desiring to work,' and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. We think this conclusion is obviously true. As paid agents their duty is to find places for their principals. To act in behalf of those seeking workers is another and different service, although, of course, the same individual may be engaged in both. Appellants' occupation as agent for workers cannot exist unless the latter pay for what they receive. To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. 'You take my house when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live.'

We have held employment agencies are subject to police regulation and control. 'The general nature of the business is such that, unless regulated, many persons may be exposed to misfortunes against which the legislature can properly protect them' (Brazee *v.* Michigan, 241 U. S. 340, 343, 60 L. Ed. 1034, 1036, 36 Sup. Ct. Rep. 561). But we think it plain that there is nothing inherently immoral or dangerous to public welfare in acting as paid representative of another to find a position in which he can earn an honest living. On the contrary, such service is useful, commendable, and in great demand. In Spokane *v.* Macho (51 Wash. 322, 324, 21 L. R. A., N. S., 263, 130 Am. St. Rep. 1100, 98 Pac. 755) the Supreme Court of Washington said: 'It cannot be denied that the business of the employment agent is a legitimate business; as much so as is that of the banker, broker or merchant; and under the methods prevailing in the modern business world it may be said to be a necessary adjunct in the prosecution of business enterprises.' Concerning the same subject (Ex parte Dickey, 144 Cal. 234, 236, 66 L. R. A. 928,

103 Am. St. Rep. 82, 77 Pac. 924, 1 Ann. Cas. 428) the Supreme Court of California said: 'Tl e business in which this defendant is engaged is not only innocent and innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health safety or morals.' And this conclusion is fortified by the action of many states in establishing free employment agencies charged with the duty to find occupation for workers.

It is alleged 'that plaintiffs have furnished positions for approximately 90,000 persons during the last year, and have received applications for employment from at least 200,000 laborers, for whom they have been unable to furnish employment. * * * That such agencies have been established and conducted for so long a time that they are now one of the necessary means whereby persons seeking employment are able to secure the same.' A suggestion in behalf of the state, that while a pursuit of this kind 'may be beneficial to some particular individuals or in specific cases economically it is certainly non-useful, if not vicious, because it compels the needy and unfortunate to pay for that which they are entitled to without fee or price, that is, the right to work,' while possibly indicative of the purpose held by those who originated the legislation, in reason gives it no support.

Because abuses may and probably do grow up in connection with this business is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all the fundamental guaranties of the constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

The general principles by which the validity of the challenged measure must be determined have been expressed many times in our former opinions. It will suffice to quote from a few.

In Allgeyer *v.* Louisiana (165 U. S. 578, 589, 41 L. Ed. 832, 835, 17 Sup. Ct. Rep. 427) we held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the state for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment. 'The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his per-

son, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.'

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'The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But between the useful busines which may be regulated and the vicious business which can be prohibited lie many nonuseful occupations which may or may not be harmful to the public, according to local conditions or the manner in which they are conducted' (Murphy *v.* California, 225 U. S. 623, 628, 56 L. Ed. 1229, 1232, 41 L. R. A., N. S., 153, 32 Sup. Ct. Rep. 697)."

Newspapers—Revocation of Mailing Privilege—Violation of Espionage Act.—In Jeffersonian Publishing Co. *v.* West, decided recently by the U. S. Dictrict Court for the Southern District of Georgia, the validity of the Espionage Act of Congress of June 15, 1917, was sustained by Judge Speer. Certain articles appearing in a publication issued by the plaintiff were held violative of the act, and the court sustained the action of the Postmaster General in excluding the publication from the mails. Post Master General Burleson ordered the second-class mailing privilege of "The Jeffersonian" withdrawn and an injunction was asked to prevent compliance with the order. The court refused a preliminary injunction but granted a rule to show cause why the injunction should not issue as requested. At this hearing the court decided that the petitioner was entitled to specific information as to the features of "The Jeffersonian" deemed so unmailable as to induce the conclusion that the publication was not a newspaper in the meaning of the law conferring the second-class privilege. This information having been furnished the case is stated and concluded as follows: The question is presented, Do the facts and the determination of the Postmaster General demand or justify a court of the United States in the interference here sought with an administrative branch of government?

In the affidavit of the Postmaster General, after the specification required by the court of the passages in "The Jeffersonian" held by him to be unmailable, there appears the following statement: